UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:18-cv-00641-FDW

ADRIAN D. MURRAY,)	
	Plaintiff,)	
vs.)	<u>ORDER</u>
JOHN DOE, et al.,)	
	Defendants.)))	

THIS MATTER is before the Court on the Plaintiff's "Partial Voluntary Dismissal for Purposes of Removal to United States Dist. Court" [Doc. 14] and Plaintiff's "Petition for Removal of Civil Action from State Court" [Doc. 15].

In the Petition for Removal, it appears that Plaintiff seeks the Court to remove his action in the North Carolina Industrial Commission related to the same facts and circumstances he alleges in his Complaint in the instant matter to this Court. Plaintiff states that he has filed a state tort claims alleging gross negligence in "case/TA file No: TA26320 N.C. Industrial Commission." [Doc. 15 at 2]. Plaintiff contends that the defendants in that case have obstructed his access to discovery materials in that case. [Id. at 3-5]. Plaintiff notes in his Petition for Removal that he has filed the Partial Voluntary Dismissal as to the N.C. Department of Public Safety contemporaneously with his Petition for Removal. [Id. at 7].

Then, in his Partial Voluntary Dismissal, Plaintiff moves the Court for a voluntary dismissal of the state tort action in the N.C. Industrial Commission "as to the N.C. Department of Public Safety," but wishes to maintain his claims against the individual defendants in his Industrial Commission case for purposes of removal to this Court. [Doc. 14].

Plaintiffs' motions will be denied. This Court is without authority in law to remove

Plaintiff's case in the Industrial Commission to the District Court under the circumstances of this

case. Plaintiff's Petition for Removal indicates his action in the Industrial Commission is based

on allegations of gross negligence, a state tort claim. An action that could not have been originally

filed in federal court cannot be removed to federal court. City of Chicago v. Int'l College of

Surgeons, 522 U.S. 156, 163, 118 S.Ct. 523, 529 (1997); 28 U.S.C. § 1441(a). Further, it is a

defendant's, not plaintiff's, right to remove an action to a different or proper forum when such

removal is allowed by the law. See id. The Court is also without authority to dismiss any

defendants from any action in the Industrial Commission.

IT IS THEREFORE ORDERED that:

1. Plaintiff's motion for voluntary dismissal [Doc. 14] is **DENIED**.

2. Plaintiff's Petition for Removal of Civil Action from State Court [Doc. 15] is also

DENIED.

IT IS SO ORDERED.

Signed: May 23, 2019

Frank D. Whitney

Chief United States District Judge

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